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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 687

ABRAHAM NEWMAN,

Appellant,

against

ROBERT E. MURPHY, WARDEN OF AUBURN STATE PRISON, AUBURN, N. Y.

JURISDICTIONAL STATEMENT

The jurisdiction of this Honorable Court is invoked under Title 28, United States Code, Sec. 1257(2).

The judgment of the Appellate Division, filed October 31, 1951, herein sought to be reviewed is the judgment of the court of last resort, since the court of appeals has denied leave to appeal to that court. *People* v. *Hatzis,* 297 N. Y. 163, 77 N. E. 2d 385.

> (5,-6) "So interpreted subdivision 3 of section 520 permits appeal to this Court in any criminal case only upon a certification by a justice of the Appellate Division or by a judge of the Court of Appeals as therein provided."

Petitioner questioned the constitutionality of Section 212 of the Correction Law as amended by Chapter 70 Laws of

1936. And alleged that the amended statute is *ex post facto* as to him, and is repugnant to Article 1, Section 10, of the Constitution of the United States.

Amended Section 212 of the Correction Law, as copied from the booklet, "Rules of the Board of Parole for State Prisons and the Elmira Reformatory and Laws Relating to Parole," pg. 14:

> Section 212. Prisoners Subject to Parole.
>
> Every person sentenced to an indeterminate sentence and confined in a state prison, when he has served a period of time equal to the minimum sentence imposed by the court for the crime of which he was convicted, shall be subject to the jurisdiction of the board of parole. The time of his release shall be discretionary with the board of parole, . . ."

From the same titled booklet dated 1935, Section 212 prior to the amendment reads as follows:

> Section 212. Prisoners Subject to Parole.
>
> Every person sentenced to an indeterminate sentence and confined in a state prison *who has never before been convicted of a crime punishable by imprisonment in a state prison,* when he has served a period of time equal to the minimum sentence imposed by the court for the crime of which he was convicted, shall be subject to the jurisdiction of the board of parole. (Italics mine.)

Since petitioner was sentenced to a term of 20 years to life, on June 1934, and he had served a prior term of 3 years 6 months to 7 years in state prison (1930 to 1933) the New York State Board of Parole had no jurisdiction as to petitioner's release at the time that petitioner was convicted and sentenced. And the App. Div. in *Pizza* v. *Lyons, supra,* has ruled to that effect (Decision appended hereto).

> "Prior to 1936 the parole board had no jurisdiction over second offenders."

At the same time the App. Div. ruled that, *Pizza* v. *Lyons*, *supra*:

> "Chapter 70 of the Laws of 1936, effective March 6, 1936, amended section 223 of the Correction Law and broadened the Board's jurisdiction to every person given an indeterminate sentence to a state prison on or after July 1, 1928."

The App. Div. has decreed that by retroactive legislation the Board of Parole was given discretionary jurisdiction over petitioner, wherein petitioner's position was worsened in that he must now carry the additional burden of also obtaining a favorable decision from said board before he can obtain his release on parole, and to date he has been held for two years reconsideration only. And since this decision can be repeated over and over again, so that the sentence for Murder 2nd degree can be changed into one for Murder 1st degree and a sentence of natural life. It is proper that this Honorable Court review this case to ascertain whether or not it is *Ex Post Facto* legislation.

In *In re Medley, Petitioner,* 134 U. S. 155, 1890, the Supreme Court stated as follows:

> "* * * any law which was passed after the commission of the offense for which the party is being tried, is an ex post facto law, when it inflicts a greater punishment than the law annexed to the crime at the time it was committed * * * or alters the situation of the accused to his disadvantage."

In a more recent case involving *ex post facto* legislation in a state, this Honorable Court held unconstitutional a statute which is similar in effect to the 1936 statute here attacked in *Lindsey* v. *Washington,* 1937, 301 U. S. 397, 57 S. Ct. 797, 81 L. Ed. 1182, the state indeterminate sentence statute in force at the time when the crime was committed has allowed the trial judge in his discretion to fix a maxi-

mum sentence less than the statutory maximum. The later statute, under which the petitioner was sentenced, required the trial judge to give him the statutory maximum period of confinement, and release him upon parole for the balance of the maximum sentence, subject to the revocation of parole by the board or by the governor.

In holding the latter statute invalid as *ex post facto*, this Honorable Court stated:

> "The Constitution forbids the application of any new punitive measure to a crime already consummated, to the detriment or material disadvantage of the wrongdoer."

Article 1, Section 10, of the Constitution of the United States, forbids the passage by any State of an *ex post facto* law.

This Honorable Court has often construed this provision and ruled that laws may not be given retroactive effect unless they leave untouched the substantial protections surrounding an accused person at the time of the commission of the crime alleged.

WHEREFORE, petitioner prays for the allowance of the appeal so that this cause may be reviewed by this Honorable Court and that the judgment may be reversed, and for such and further relief as to this Court may seem meet.

Respectfully submitted on February 21st, 1952.

ABRAHAM NEWMAN,
Appellant in propria persona,
135 State Street,
Auburn, New York.

Office - Supreme Court,
FILED
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 687

ABRAHAM NEWMAN,

Appellant,

vs.

ROBERT E. MURPHY, WARDEN OF AUBURN STATE PRISON, AUBURN, NEW YORK

APPEAL FROM THE SUPREME COURT, COUNTY OF CAYUGA, STATE OF NEW YORK

STATEMENT OPPOSING JURISDICTION AND MOTION TO AFFIRM

NATHANIEL L. GOLDSTEIN,
Attorney General of the State of New York,
Attorney for Appellee,
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Solicitor General of the State of New York,
HERMAN N. HARCOURT,
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The Capitol,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 687

ABRAHAM NEWMAN,

Appellant,

vs.

ROBERT E. MURPHY, Warden of Auburn State Prison, Auburn, New York

---

APPEAL FROM THE SUPREME COURT, COUNTY OF CAYUGA, STATE OF NEW YORK

STATEMENT AND MOTION TO AFFIRM

May it please the Court:

Now comes the appellee in the above entitled cause, by his counsel of record, and moves that the order and judgment appealed from be affirmed.

Jurisdiction

Jurisdiction would appear to exist if the allegations of the appellant were substantial and substantiated.

Motion to Affirm

The motion to affirm is made upon the ground that the decision of the cause depends upon the resolution of the question whether the amendments to New York Correction Law Sections 212, 223 (Laws of 1936, ch. 70) and 242 (Laws of 1935, ch. 902; Laws 1948, ch. 631), as applied to the appellant who was previously convicted of a felony, are unconstitutional as being *ex post facto* laws. The pertinent statutes are contained in the appendix hereto, as they existed at the time of appellant's conviction and as later amended.

Prior to the amendments the appellant, who had been convicted in 1934 of the crime of murder, second degree, as a second offender, and sentenced to a term of twenty years to life, could only hope to be released from prison by an act of executive clemency on the part of the Governor (*People* v. *Washington*, 264 N. Y. 335, 338).

It will be noted that Sections 212 and 223 of the State Correction Law, as they were at the time of appellant's conviction, specifically excluded a prisoner previously convicted of a crime punishable by imprisonment in a state prison, from the benefits of parole therein provided. This prohibition was removed from these sections of the law by Chapter 70 of the Laws of 1936.

Thus it is apparent that the amendment of 1936 was not an *ex post facto* law. It ameliorated the conditions under which appellant previously labored by permitting him to be considered for a "statutory" commutation and he never has been deprived of possible executive clemency should the Governor so determine under his constitutional powers (New York State Constitution Article IV, § 4). In passing it is to be noted that although the Governor usually did

attach the conditions suggested by the Legislature in commuting sentences, this

> "* * * was only a courteous gesture toward the Legislature, as that body could neither add to nor detract from the explicit grant by the People of the State." (*People ex rel. Ross* vs. *Wilson*, 250 App. Div. 143, 145.)

State Correction Law Section 235, formerly numbered Section 236, is included in the appendix for the purpose of demonstrating to the Court the operative procedure to present a prisoner for consideration for parole.

The amendment of 1948 to Section 242 places the statutory discretionary power to reduce the sentence of a prisoner solely in the Prison Board but does not affect the Governor's constitutional clemency powers. Thus one agency was by statute actually eliminated from those recommending and approving such reductions, i. e., the Governor himself. The interjection of the Parole Board into the picture is not new under the 1948 amendment, inasmuch as the Parole Board was given jurisdiction over a prisoner in the appellant's position by the 1936 amendment in order to ameliorate his previous position of not being eligible to parole at all.

Since the exercise of executive clemency is an act of grace and not of right, it does not appear that any constitutional right of the appellant has been invaded. The power of executive clemency may be delegated. This Court in *Solesbee* v. *Balkcom*, 339 U. S. 9 said, p. 12:

> "Power of executive clemency in this country undoubtedly derived from the practice as it had existed in England. Such power has traditionally rested in governors or the President, although some of that power is often delegated to agencies such as pardon or parole boards. Seldom, if ever, has this power of executive clemency been subjected to review by the

Courts. See *Ex parte United States*, 242 U. S. 27, 42, and cases collected in Note, 38 L. R. A. 577, 587."

Opinions Below

No opinion was written by either court below. The memorandum decision of the Supreme Court, Appellate Division, Fourth Department, is reported in 279 App. Div. 627, and is as follows:

> "Order affirmed, without costs of this appeal to either party. (See *Matter of Pizza* v. *Lyons*, 278 App, Div. 65.) All concur."

The memorandum decision of the Court of Appeals is reported in 303 N. Y. Mem., p. 831, and is as follows:

> "Motion denied. No substantial constitutional question is presented. (*Matter of Pizza* v. *Lyons*, 278 App. Div. 65, affd. 303 N. Y. 736.)"

Dated: March 19, 1952.

NATHANIEL L. GOLDSTEIN,
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State of New York,
Attorney for Appellant;
WENDELL P. BROWN,
Solicitor General of the
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HERMAN N. HARCOURT,
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of the State of New York,
Counsel for Appellee,
The Capitol,
Albany, N. Y.

APPENDIX

NEW YORK STATE CORRECTION LAW

Section 212

In 1934.

§ *212. Prisoners subject to parole.* Every person sentenced to an indeterminate sentence and confined in a state prison who has never before been convicted of a crime punishable by imprisonment in a state prison, when he has served a period of time equal to the minimum sentence imposed by the court for the crime of which he was convicted, shall be subject to the jurisdiction of the board of parole. The time of his release shall be discretionary with the board of parole, but no such person shall be released until he has served such minimum sentence nor until he shall have served one year. The action of the board of parole in releasing prisoners shall be deemed a judicial function and shall not be reviewable if done according to law.

As amended by Laws of 1936.

§ *212. Prisoners subject to parole.*

Every person sentenced to an indeterminate sentence and confined in a state prison, when he has served a period of time equal to the minimum sentence imposed by the court for the crime of which he was convicted, shall be subject to the jurisdiction of the board of parole. The time of his release shall be discretionary with the board of parole, but no such person shall be released until he has served such minimum sentence nor until he shall have served one year. The action of the board of parole in releasing prisoners shall be deemed a judicial function and shall not be reviewable if done according to law. As amended L. 1932, c. 457; L. 1936, c. 70, § 2, eff. March 6, 1936.

NEW YORK STATE CORRECTION LAW

Section 223

In 1934.

§ *223. Application of article.* The provisions of this article shall apply to every person sentenced to an indeterminate sentence on or after July first, nineteen hundred and twenty-eight, and confined in a state prison and who has never before been convicted of a crime punishable by imprisonment in a state prison. It shall not apply to any other persons. All provisions of law applying to the parole of prisoners sentenced to prison before July first, nineteen hundred and twenty-eight and repealed by this act shall be transferred to the rules of the board of parole and shall continue to have the same force and effect of law as before this repeal.

As amended by Laws of 1936.

§ *223. Application of article.*

The provisions of this article shall apply to every person sentenced to an indeterminate sentence on or after July first, nineteen hundred and twenty-eight, and confined in a state prison. All rules of the board of parole applying to the parole of prisoners sentenced to prison before July first, nineteen hundred and twenty-eight, shall continue to have the force and effect of law. As amended L. 1932, c. 457; L. 1936, c. 70, § 3, eff. March 6, 1936.

NEW YORK STATE CORRECTION LAW

Section 235, formerly Section 236

In 1934.

§ 236. *Allowance of commutation and compensation to be determined by prison board; regulations respecting the same; part of commutation or compensation may be withheld.* For the purpose of applying the rules mentioned in the last section for the allowance or disallowance of commutation for the good conduct of any convict, and for the allowance of compensation under the provisions of this article

for efficient and willing performance of duties assigned, a board shall be constituted in each of the prisons of this state, to consist of the agent and warden, the principal keeper, the physician therein and the superintendent of industries, and, in each of the penitentiaries of this state, the warden or superintendent, the deputy or principal keeper and the physician therein, or of the persons acting in their place and stead. This board shall meet once in each month before the date fixed for the transmission of their report to the governor, as hereinbefore provided, and proceed to determine the amount of commutation and compensation which they shall recommend to be allowed to any convict, which shall not in any case exceed the amount fixed by this article. They shall have full discretion to recommend the withholding of the allowance of commutation for good conduct, or compensation, or of a part thereof, as a punishment for offenses against the discipline of the prison or penitentiary, in accordance with the rules hereinbefore mentioned, except that a convict received in a prison or penitentiary prior to May first, nineteen hundred and sixteen, shall be credited with an allowance of ten days compensation for each thirty day period, dating from the date of his confinement in prison to May first, nineteen hundred and sixteen. Compensation credited to a convict in the first instance, in his account, by the agent and warden, as provided in section two hundred and thirty, shall stand as the compensation allowed, unless withheld wholly or partly by the board as pnishment, as above provided.

As amended by the Laws of 1935.

§ 235. *Determination of reduction of sentence* (formerly §236).

For the purpose of applying the rules mentioned in the last section for the allowance or disallowance under the provisions of this article of reduction for the good conduct of any prisoner, and for efficient and willing performance of duties assigned, a board shall be constituted in each of the prisons of this state, to consist of the warden, the principal keeper, the physician and the officer in charge of industries therein

and, in each of the penitentiaries of this state, the warden or superintendent, the deputy or principal keeper and the physician therein, or of the persons acting in their place and stead. This board shall meet once in each month before the date fixed for the transmission of their report to the governor, as hereinbefore provided, and proceed to determine the amount of reduction of sentence which they shall recommend to be allowed to any prisoner, which shall not in any case exceed the amount fixed by this article. They shall have full discretion to recommend the withholding of the allowance of reduction of sentence for good conduct and for efficient and willing performance of duties assigned, or of a part thereof, as a punishment for offenses against the discipline of the prison or penitentiary, in accordance with the rules hereinbefore mentioned. Reduction credited to a prisoner in the first instance, in his account, by the warden, as provided in section two hundred and thirty, shall stand as the reduction allowed, unless withheld wholly or partly by the board as punishment, as above provided. Formerly § 236, renumbered 235 and amended L. 1935, c. 902, § 7, eff. June 1, 1935.

NEW YORK STATE CORRECTION LAW

Section 242, formerly Section 243

In 1934.

§ 243. *Governor to annex condition to discharge.* (Later renumbered § 242.) The governor shall, in reducing the sentences of prisoners not subject to the jurisdiction of a board of parole, annex a condition that such prisoner shall live and remain at liberty without violating the law, and be subject to the jurisdiction and control of the board of parole as provided in article eight hereof, and also a condition to the effect that if any such prisoner shall, during the period between the date of his discharge by reason thereof and the date of the expiration of the full term for which he was sentenced, commit a felony within this state, or commit a crime under the laws of any other state, government, or country, which if committed within this state would be a felony, and if he shall be convicted of such crime at any time, he shall, in

addition to the sentence which may be imposed for such felony be compelled to serve in a state prison the remainder of the term of his previous state prison sentence without commutation which he would have been compelled to serve but for such commutation, as provided for in this article.

As amended by Laws of 1935.

§ 242. *Governor to annex condition to discharge.*

The governor shall, in reducing the sentences of prisoners not subject to the jurisdiction of a board of parole, annex a condition that every such prisoner shall live and remain at liberty without violating the law, and be subject to the jurisdiction and control of the board of parole as provided in article eight hereof, and also a condition to the effect that if any such prisoner shall, during the period between the date of his discharge by reason thereof and the date of the expiration of the full term for which he was sentenced, commit a felony within this state, or commit a crime under the laws of any other state, government, or country, which if committed within this state would be a felony, and if he shall be convicted of such crime at any time, he shall, in addition to the sentence which may be imposed for such felony be compelled to serve in a state prison the remainder of the term of his previous state prison sentence without reduction which he would have been compelled to serve but for such reduction, as provided for in this article. Formerly § 243, amended L. 1931, c. 458; L. 1932, c. 297; renumbered 242, and amended L. 1935, c. 902, § 9, eff. June 1, 1935."

As amended in 1948.

§ 242. *Condition to be annexed to discharge.*

In reducing the sentences of prisoners not subject to the jurisdiction of a board of parole, the board herein provided for determining reduction of sentence shall annex a condition that every such prisoner shall live and remain at liberty without violating the law, and be subject to the jurisdiction and control of the board of parole as provided in article eight hereof, and also a condition to the effect that if any

such prisoner shall, during the period between the date of his discharge by reason thereof and the date of the expiration of the full term for which he was sentenced, commit a felony within this state, or commit a crime under the laws of any other state, government, or country, which if committed within this state would be a felony, and if he shall be convicted of such crime at any time, he shall, in addition to the sentence which may be imposed for such felony be compelled to serve in a state prison the remainder of the term of his previous state prison sentence without reduction which he would have been compelled to serve but for such reduction, as provided for in this article. As amended L. 1948, c. 631, § 1, eff. July 1, 1948.

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IN THE

Supreme Court of the United States

October Term, 1951

No. 687

ABRAHAM NEWMAN, *Appellant,*

vs.

ROBERT E. MURPHY, Warden of Auburn State Prison, Auburn, New York.

APPEAL FROM THE SUPREME COURT, COUNTY OF CAYUGA, STATE OF NEW YORK

BRIEF IN OPPOSITION TO A STATEMENT AND MOTION TO AFFIRM

ABRAHAM NEWMAN, *Appellant,*
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BATAVIA TIMES LAW PRINTERS,
BATAVIA, N. Y.

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IN THE

Supreme Court of the United States

October Term, 1951

No. .....

ABRAHAM NEWMAN, *Appellant,*

vs.

ROBERT E. MURPHY, Warden of Auburn State Prison, Auburn, New York.

APPEAL FROM THE SUPREME COURT, COUNTY OF CAYUGA, STATE OF NEW YORK

BRIEF IN OPPOSITION TO A STATEMENT AND MOTION TO AFFIRM

To the Supreme Court of the United States and the Honorable Judges Thereof:

The motion to affirm, herein opposed, is not based on law or on a true interpretation of the law. Once again, your appellant is caught in a web of misrepresentation, and again a plea is made that the amended statute ameliorated petitioner's position.

In appellant's petition for leave to appeal one issue was presented, "that the amendment to Section 212 of the New York Correction Law was unconstitutional as to him."

Petitioner respectfully calls attention to a would be axiom and corollary on page 2 of respondent's motion to affirm.

1. "Prior to the amendments the appellant could only hope to be released from prison by an act of executive clemency on the part of the governor."
2. "It will be noted that Sections 212 and 223 of the State Correction Law, as they were at the time of appellant's conviction, specifically excluded a prisoner previously convicted of a crime punishable by imprisonment in a state prison, from the benefits of parole(?) therein provided."

And the conclusion followed:

"Thus it is apparent that the amendment of 1936 was not *ex post facto.*"

Since respondent's opposition appears to be based on the foregoing, your petitioner, shall now conclusively prove that the foregoing interpretations are false.

The N. Y. Correction Law is the law controlling the release of prisoners, and it is also the authority for the Board of Parole. Sections 210-223 (inclusive) pertain to parole from prisons.

Sections 210-212 as they read prior to the amendment of 1936:

Section 210. *Board of Parole; powers and duties.*

Subject to other provisions of law, the board of parole in the division of parole of the executive department shall be charged with the duty of determining what prisoners serving an indeterminate sentence in state prisons and the Elmira Reformatory, *may be released on parole and when and under what conditions.* • • •

Section 211. Pre-Parole Record.

Section 212. *Prisoners subject to parole.*

> Every person sentenced to an indeterminate sentence and confined in a state prison *who has never before been convicted of a crime punishable by imprisonment in a state prison,* when he has served a period of time equal to the minimum sentence imposed by the court for the crime of which he was convicted, shall be subject to the jurisdiction of the board of parole. The time of his release shall be discretionary with the board of parole, * * *

Section 210, granted the board of parole the powers to determine whom to release on parole and when and under what conditions. But, section 212, stated to whom that power could be applied, and specifically stated what group of prisoners was under the jurisdiction of the board of parole, "*indeterminate sentence men never before convicted of a crime punishable by imprisonment in a state prison*". Respondent, being aware of the foregoing, contends that there was no other provision for the release of prisoners, from prison, who were not under the jurisdiction of the board of parole. However, one finds that sections 230-242 dealt with the discretionary reduction of sentences and provided a statutory procedure wherein prisoners not subject to the jurisdiction of the board of parole would be released.

Section 230, paragraph 2.

> Every prisoner, confined in a state prison or penitentiary may in the discretion of the governor as hereinafter provided receive for good conduct and efficient and willing performance of duties assigned, a reduction of his sentence not to exceed ten days for each month of the minimum term in the case of an indeterminate sentence, or of the term as imposed by the court in the case of a definite sentence. The maximum reduction allowable under this provision shall be four months per year, but nothing herein contained shall be con-

strued to confer any right whatsoever upon any prisoner to demand or require the whole or any part of such reduction.

Section 232. Monthly report of warden to governor.

* * * in all cases the report shall show the amount of reduction recommended, and the date of expiration of the term and, *in the case of prisoners not subject to the jurisdiction of the parole board, the date when he may be released, if such reduction be allowed.*

The foregoing two sections (230-232) are the prescribed statutory procedure of release to be applied to prisoners not subject to the jurisdiction of the board of parole, and that procedure is still in effect to-day, and being applied to all definite sentence prisoners who are granted a reduction of sentence. The only group of prisoners that cannot be released from prison through a statutory procedure, but must be granted executive clemency in order to be released, are those men commuted from a sentence of death and those that were sentenced to Natural Life (no minimum sentence specified).

Since the foregoing sections of the correction law were in force prior to the amendment of 1936, the conclusion must be that there was a statutory procedure wherein your petitioner would be released if he was granted a discretionary reduction of sentence, which reduction was granted to him. And the additional requirement under the amended statute in 1936 (sec. 212), wherein your petitioner has the additional burden of obtaining a second favorable decision from the board of parole in order to obtain his release is UNCONSTITUTIONAL since it is based on an *EX POST FACTO* LAW, which is forbidden by THE CONSTITUTION OF THE UNITED STATES, Article 1, Section 10, and by the decisions of this Honorable Court:

Lindsey v. Washington, 1937, 301, U. S. 397, 57 S. Ct. 797, 81 L. Ed. 1182.

and as in *re* Murphy, Circuit Court D. Mass. 1898, No. 1833.

> "In addition, the option whether or not to revoke the permit was vested in a single executive board, while, under the act of 1895, no permit can issue without the approval of two executive boards; the practical result of which is that, under the latter statute, the prisoner has the burden of securing a double approval before he can obtain his liberty."

Respondent contends that the governor's action in granting or denying a reduction of sentence as recommended to him, prior to the Laws of 1948, ch. 631, was an act of executive clemency. But, petitioner respectfully calls attention to the provision of section 232 of the Correction Law;

> Sec. 232. Monthly report of warden to governor.
>
> "• • • the warden or superintendent of each of the state correctional institutions and of each of the penitentiaries in this state shall forward to the governor through the department of correction a report, directed to him, of any prisoner whose terms may be diminished and who may be released the following month, by reason of the reduction of his or her sentence." • • •

that section specifically limited the governor's authority as to when he could act on the reduction of sentence, though he could act under the authority of the constitution at any time.

In view of the above and other restrictions placed on the governor by the Correction Law, the function of granting or denying a reduction of sentence by authority of the Correction Law cannot be deemed to be an act of grace, wherein one acts without any statutory limitation. The laws of 1948 have transferred the duty, from the governor to the prison boards, of granting reduction of sentences and the governor is no longer concerned with that task, that change in itself shows that the legislature had never considered the governor's action under the Correction Law, as an act of grace.

Since the motion to affirm was based on the plea that the amendment to section 212 was not unconstitutional, and nothing was shown wherein this Honorable Court had no jurisdiction to resolve the constitutional question presented, that motion should be dismissed, and the decision of the Special Term be reversed.

Your appellant has prosecuted this cause without the assistance of counsel, and has prepared all Briefs and Motions presented to the courts, however, he has had the aid and comfort from the knowledge that his cause was just, and that justice will triumph in the end. But more important were the comfort that he gained from the words of the Hon. Justice Black:

> "Under our Constitutional system, courts stand against any winds, which blow as havens of refuge for those who might otherwise suffer because they are weak, helpless, outnumbered or because they are nonconforming victims of prejudice and public excitement."

Respectfully submitted,

ABRAHAM NEWMAN, *Appellant,*
In Propria Personna,
135 State Street,
Auburn, New York.

Dated: April , 1952.

APRIL 28, 1952.

Per Curiam Decision.

No. 687. NEWMAN *v.* MURPHY, WARDEN. Appeal from the Supreme Court of New York, Appellate Division, Fourth Judicial Department. *Per Curiam:* The appeal is dismissed for the want of a substantial federal question. Petitioner *pro se*. *Nathaniel L. Goldstein*, Attorney General of New York, *Wendell P. Brown*, Solicitor General, and *Herman N. Harcourt*, Assistant Attorney General, for respondent. Reported below: 279 App. Div. 627, 108 N. Y. S. 2d 970.